IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.1857 OF 2006

Avinash Automobiles & others ...Petitioners

vs.

Tirupati Agencies and another ...Respondents

Mr.Rahul S. Kate for the Petitioners
Mr.V.N.Shingnapurkar for Respondent No.1
Mr.Rajesh More A.P.P. for State

CORAM: A.S.OKA,J.
DATE : OCTOBER 10,2006.

P.C.:

1. Heard the Advocate appearing for the Petitioners. The Petitioners are arraigned as accused in a complaint filed by the first Respondent under section 138 of the Negotiable Instruments Act, 1881. The Petitioners have been convicted by the Judgment and order dated 27th December 2005. The Petitioners have preferred an Appeal against the order of conviction. The Petitioners applied under section 391 read with section 311 of the Code of Criminal Procedure, 1973 for permission to cross examine the complainant and to lead defence evidence. The said Application has been rejected by the learned Additional Sessions Judge by the order impugned in this Petition.

2. Shri Kate for the Petitioners submitted that in the statement under section 313 of the said Code of the Petitioners, it was stated that the Petitioners were desirous

of examining the defence witnesses and in fact witness summons was issued to a defence witness. He stated that thereafter a warrant was issued against some of the accused persons and especially accused No.3. Therefore, under the compelling circumstances, a pursis was filed stating therein that accused No.3 was not desirous of leading further evidence. He submitted that prejudice will be caused if the Petitioners are not permitted to lead additional evidence.

3. I have considered the submissions. The order of conviction was passed on 27th December 2005. The Petitioners preferred the Appeal on 23rd January 2006. The present Application was made on 29th July 2006. Thus, the Application was filed six months after filing of the Appeal. The impugned order records that the evidence close pursis was filed on 8th November 2005. Thereafter, on 23rd November 2005 and 28th November 2005 adjournment was granted in favour of the Petitioners. The argument in the case was heard on 13th December 2005. Thus, even after the filing of pursis on 8th November 2005, on two occasions adjournment was granted in favour of the Petitioners.

4. In the circumstances, the learned Ad hoc Additional Sessions Judge was justified in rejecting the application made by the Petitioners. There is no merit in the Petition and the same is rejected.

JUDGE